

REDACTED – PUBLIC VERSION**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SMITH KLINE & FRENCH LABORATORIES,)	
LTD, and SMITHKLINE BEECHAM CORP.,)	
d/b/a GLAXOSMITHKLINE,)	Civil Action No: 05-197 GMS
)	
Plaintiffs,)	
)	
v.)	CONFIDENTIAL:
)	<u>FILED UNDER SEAL</u>
TEVA PHARMACEUTICALS U.S.A., INC.,)	
)	
Defendant.)	
)	

PROPOSED PRETRIAL ORDER

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Dated: November 3, 2006

On November 21, 2006, counsel for plaintiffs Smith Kline & French Laboratories, Ltd., and SmithKline Beecham Corp., d/b/a GlaxoSmithKline (“GSK”) and counsel for defendant Teva Pharmaceuticals USA, Inc. (“Teva”) shall appear before the Court at a pretrial conference held pursuant to Federal Rule of Civil Procedure (“Rule”) 16. The names, addresses, and telephone numbers of counsel for the parties are provided by the signature certifications to this Order. The following matters as to the trial commencing on December 18, 2006, are hereby ordered by the Court.

I. NATURE OF THE ACTION

This is an action for patent infringement and jurisdiction of the Court is invoked under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202. Jurisdiction is not disputed.

II. PARTIES’ PRETRIAL SUBMISSIONS

The following stipulations and statements were submitted and are attached to and made a part of this Order.

1. The Parties’ Joint Statement of Uncontested Facts

A comprehensive stipulation or statement of all uncontested facts, which will become a part of the evidentiary record in the case, is attached as Exhibit 1 to this Order.

2. The Parties’ Statements of Contested Issues of Fact and Law

GSK’s statement of the contested issues of fact is attached as Exhibit 2 to this Order; Teva’s statement of the contested issues of fact is attached as Exhibit 3 to this Order; GSK’s statement of the contested issues of law is attached as Exhibit 4 to this Order; and Teva’s statement of the contested issues of law is attached as Exhibit 5 to this Order.

3. The Parties' Pre-Marked Trial Exhibits

In an effort to narrow their objections, the parties have agreed to continue to discuss objections to exhibits. The parties have agreed to finalize their objections to exhibits by November 10, 2006, and to submit their joint exhibit list and revised objections to exhibits thereafter. Additionally, because expert discovery has not been completed, the parties have reserved their rights to supplement exhibit lists to reflect the remaining expert discovery. Preliminary exhibit lists and objections have been submitted on November 3, 2006 with this Proposed Order.

The parties' exhibit lists and objections thereto are attached as follows: GSK's exhibit list is attached as Exhibit 7 to this Order; Teva's Objections to GSK's exhibit list is attached as Exhibit 8 to this Order; Teva's exhibit list is attached as Exhibit 9 to this Order; and GSK's objections to Teva's Exhibit List is attached as Exhibit 10 to this Order. The parties' joint exhibit list, Exhibit 6, will be submitted to the Court prior to the November 21, 2006 pretrial conference.

Evidence not included on the attached exhibit lists shall not be used at trial for purposes other than rebuttal or impeachment without good cause shown. Each party may use an exhibit that is listed on the other side's exhibit list, to the same effect as though it were listed on its own exhibit list, subject to evidentiary objections. Any exhibit, once admitted, may be used equally by each party for any proper purpose and subject to the rules of evidence unless otherwise ordered by the Court. The listing of a document on a party's exhibit list is not an admission that such document is relevant or admissible when offered by the opposing party for the purpose that opposing party wishes to admit the document.

The parties have agreed to continue to discuss the timing of the exchange of demonstrative exhibits. All demonstrative exhibits, except those exhibits created during testimony of a witness, shall be identified on a separate demonstrative exhibit list served with the proposed demonstrative exhibits. The parties agree that demonstrative exhibits shall not be offered as substantive evidence in support of the disputed claims and defenses.

4. Statements of Potential Witnesses to Be Called to Testify at Trial

GSK's witness list is attached as Exhibit 22 to this Order; Teva's objections to GSK's witness list is attached as Exhibit 11 to this Order; Teva's witness list is attached as Exhibit 12 to this Order; and GKS's objections to Teva's witness list is attached as Exhibit 13 to this Order.

5. Statements Regarding Qualifications of Expert Witnesses

GSK's statement of expert witness qualifications is attached as Exhibit 14 to this Order; Teva's statement of expert witness qualifications is attached as Exhibit 15 to this Order.

6. Brief Statement of Intended Proofs

GSK's Brief Statement of Intended Proof is attached as Exhibit 25 to this Order pursuant to Local Rule 16.4(d). Teva has not submitted a Brief Statement of Intended Proof because it is an additional legal brief not contemplated by the Court's form Pretrial Order. To the extent the Court wishes to receive a Brief Statement of Intended Proof, Teva would be pleased to submit one.

7. Deposition Designations and Counter-Designations

GSK's list of deposition designations is attached as Exhibit 16 to this Order, and Teva's list of deposition designations is attached as Exhibit 18 to this Order. The parties have agreed to defer exchanging and filing deposition objections and counter-designations. Prior to the November 21, 2006 pretrial conference, Teva's objections and counter-designations to GSK's

deposition designations will be submitted to the Court as Exhibit 17 to this Order, and GSK's objections and counter-designations to Teva's deposition designations will be submitted as Exhibit 19 to this Order.

8. Statement of Special Damages

There are no special damages sought in this case. Each party seeks fees and costs as prevailing party under 35 U.S.C. § 285.

9. Waiver of Any Claims or Defenses That Have Been Abandoned By Any Party

No claims or defenses have been waived except as set forth in the stipulations.

10. Proposed Findings of Fact and Conclusions of Law

GSK's proposed findings of fact and conclusions of law is attached as Exhibit 20 to this Order, and Teva's proposed findings of fact and conclusions of law is attached as Exhibit 21 to this Order.

11. Statement and Status of Settlement Discussions

The parties certify that they have made good-faith attempts to resolve this controversy by settlement. No agreement has been reached.

12. Statement Regarding Discovery

Fact discovery is complete, and the conclusion of expert discovery is expected on November 17, 2006, following the deposition of GSK's expert Dr. Peter G. Jenner, with the exception of the depositions of Mr. James Carmichael and Mr. Egon Berg which have been postponed pending the Court's decision on Teva's Motion *in Limine* No. 2.

13. Motions *in Limine*

The parties have submitted the following motions *in limine* and answering briefs, that are presently pending before the Court:

- Teva's Motion *in Limine* No. 1 to Exclude Evidence and Testimony on Commercial Success
- Teva's Motion *in Limine* No. 2 to Exclude Expert Testimony by Patent Attorney Egon Berg
- Teva's Motion *in Limine* No. 3 to Limit Evidence and Argument Regarding the Alleged Invention of the Patents-in-Suit
- Teva's Motion *in Limine* No. 4 to Exclude Evidence and Testimony on Patent Prosecution
- GSK's Opposition to Teva's Motion *in Limine* No. 1 to Exclude Evidence and Testimony on Commercial Success
- GSK's Opposition to Teva's Motion *in Limine* No. 2 to Exclude Testimony by Patent Attorney Egon Berg
- GSK's Opposition to Teva's Motions *in Limine* No. 3 to Limit Evidence and Argument Regarding the Alleged Invention of the Patents-in-Suit and No. 4 to Exclude Evidence and Testimony on Patent Prosecution

Teva's reply briefs are due November 6, 2006.

14. Miscellaneous Agreements Between the Parties

The parties agree that their expert CVs, if offered, are admissible.

The parties agree that expert reports may not be offered into evidence, but they may be included on the exhibit list for identification purposes.

15. Miscellaneous Issues

A list of miscellaneous issues that Teva wishes to address at the pretrial conference is attached as Exhibit 23 to this Order.

III. EXPECTED TIME OF TRIAL

Trial of this case is expected to take 5 days.

IV. Type of Trial

This is a non-jury trial.

V. Other Issues

The parties agree that Teva, as the party bearing the burden of proof on the disputed issues of invalidity and inequitable conduct, shall present its case at trial first as if it were the plaintiff in the action.

This Order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by Order of the Court to prevent manifest injustice.

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SO ORDERED this _____ day
of _____, 2006

United States District Judge